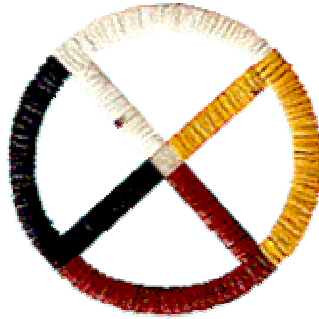


# 2



## CORE PRINCIPLES IN INDIAN HEALTH

The best approach to Indian people requires considering the principles that are important to them. These principles are the lens through which the people of Indian Country see change. In the past, policy makers and decision makers have either ignored or resisted the importance of Indian health principles as they have tried to make Indian people adapt to change. The RIW identified eight core principles in Indian health that are fundamental to meaningful dialogue with American Indians and Alaska Natives. They are:

- **A Health Care System for Indian People**
- **Tribal Sovereignty**
- **Federal Trust Responsibility**
- **Government-to-Government Relationship**
- **Tribal Consultation**
- **Self-Determination**
- **Pre-Paid Health Care**
- **A Special Appropriation for a Special Mission**

Figure 2.1, Core Principles

### A Health Care System for Indian People

The IHS obtained its unique status under three acts of Congress. The Snyder Act of 1921 is the first and principle legislation authorizing federal funds for health services to federally recognized Indian Tribes. The Act authorizes funds "... for the relief of distress and conservation of health ... [and] for the employment of ...physicians...for Indian Tribes throughout the United States." Next, the Indian Self-Determination and Education Assistance Act of 1975, as amended, gave Tribes the option of either to assume the administration and operation of health services and programs in their communities from the IHS or to remain within the IHS-administered direct health care system. Third, the Indian Health Care Improvement Act of 1976 (IHCIA), as amended, is a health-specific law. It has established the IHS as part of the Public Health Service, as the principal Federal advocate for the health of all Indian people and as the Agency responsible for elevating the health status of Indian people to the highest level possible. This Act was the first of the three laws to address the important needs of American Indians and Alaska

Natives who live in urban areas in addition to those needs of Tribal members who remain on or near their reservations.

All IHS issues have particular requirements of Indian statutory and Constitutional law and must be considered within the special government-to-government relationship between Tribal nations and the Federal Government. Answers and/or advice generally applicable to other Department of Health and Human Services (HHS) agencies cannot be presumed to be applicable to the IHS. As an operator of direct health care services, the IHS must take into account the full scope of legal issues affecting health care providers. In addition to operating the IHS direct health service program, the Agency is also responsible for helping Tribal Governments operate and manage their own health programs. This includes transferring Agency resources to Tribal Governments to support these operations. The IHS must comply with the Federal law on Indian Preference.

In 1955, the IHS was transferred to what was then known as the Department of Health, Education, and Welfare, now known as the Department of Health and Human Services which is one of 14 departments of the executive branch of the Government. Among HHS agencies, IHS is one of the few agencies that deliver directly personal and public health services to its constituents. The Agency's respect for cultural beliefs, blending of traditional practices with a modern medical model, and emphases on public health and community outreach distinguish it. The Agency's respect for cultural beliefs and its blending of traditional and modern practices might serve as a model for indigenous people around the world. Its emphasis on community-based outreach activities might serve as a model for other HHS agencies with less developed outreach models. Its consultation practices could be a model for the entire Federal Government in an era of strengthening community-based services and citizen-centered approaches to delivering services.

## **Tribal Sovereignty**

Tribes are sovereign nations. They are political entities — not a racial classification of people or a special-interest group. Tribal nations, with their own governing structures and political systems, existed long before the Europeans landed on Indian Country shores and the United States was formed. The distinction of Tribes as self-governing entities is mentioned in the Constitution of the United States. After the United States was formed and early in U.S. history (the 18th and 19th centuries), the U.S. Government recognized Tribal sovereignty and entered into more than 800 treaties with Tribes. The purpose of these treaties was mainly to exchange Tribal homeland for protection and federal services. Therefore, the provision of federal services to Indian people has most of its origin in treaties. In addition to treaties between individual Tribes and the United States, federal services were also provided through acts of Congress, statutes, Presidential Directives and Executive Orders, and court decisions. Tribal Leaders have always maintained that Tribal sovereignty is paramount among Indian principles.

Federal recognition acknowledges the Tribe as a government and establishes government-to-government status between the Tribe and the Federal Government. This status also provides members of the Tribe with certain federal services. One of these services is health care.

## **Federal Trust Responsibility**

The protection of the inalienable right to Tribal self-governance is a responsibility of the Federal Government. The legal instruments cited in the preceding section create a Federal Trust Responsibility to American Indians and Alaska Natives and their Tribal Governments. The Federal Government must uphold its trust responsibility.

Indian people are vitally connected to their identity as members of sovereign nations. Federal policymakers must not forget how American Indians and Alaska Natives were forced to give up their homelands for social, medical, and educational services to help form a more perfect union.

## **Government-to-Government Relationship**

The U.S. Constitution recognizes the political status of Tribal Governments and equates their status with the accord provided to foreign nations: "The Congress shall have power ... to regulate commerce with foreign nations ... and with Indian Tribes." Tribes exercise powers of government. They form their own governing systems, determine who belongs to the Tribe, and elect their own leaders. Tribal Leaders, representatives of their nations, expect full, open communication with Federal leaders and expect to be consulted about changes that affect them. When Federal leaders avoid full and open communication with Tribal Leaders or exclude them from dialogue about policy, programs, and services, Indian people interpret that behavior as diminishing the government-to-government relationship. Sensitivity about this relationship is very high among Indian principles because the Federal Government has broken so many promises to American Indian and Alaska Native people.

## **Tribal Consultation**

The special government-to-government relationship ensures that Tribal nations have maximum participation in the direction of federal services to Indian communities. Participation is ensured through Executive Orders, Departmental policy, and Agency policies that establish Federal consultation with Tribal nations. This participation is necessary so that Tribal Leaders can express the needs of Indian communities to Federal leaders and federal service can be responsive to these needs.

Consultation with Tribal nations is to occur when actions are proposed and before actions are taken that affect Indian communities. The HHS policy on Tribal consultation states:

"Consultation is an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision making."

The meaning of consultation is to communicate, discuss, and confer in order to make a decision or reach a settlement. This concept is not new to the U.S. Government. The signers of the Constitution referred to the concept of "consent of the governed" which is a cornerstone of a government for and by the people.

## **Self-Determination**

In exercising self-determination, Tribal Governments are empowered to choose the management direction of their health care. They can receive their health care directly from the IHS; contract with the IHS to provide services; or compact with the IHS and have the administrative control, operation, and funding transferred to Tribal Governments. More than half of IHS resources have been contracted or compacted to Tribal Governments. Tribal empowerment through self-determination and self-governance management and delivery of health care will increase in the future. The IHS must continually transition as Tribes exercise self-determination. Since Indian self-determination was enacted, Congress has strengthened the self-determination policy. The Act was originally articulated by President Nixon and signed into law by President Ford.

## **Pre-Paid Health Care**

American Indians and Alaska Native Tribes have pre-paid for health care benefits for their people through the loss of millions of acres of land and other resources. Some of the original treaties specifically state that health care will be provided as a part of the U.S. Government's responsibility. The issue of whether health care services for Tribes is or should be viewed as an entitlement is currently being discussed and considered by a number of national workgroups and committees. It is the position of a number of Tribal Governments that health care was an integral part of their respective treaties between the Tribe and the U.S. Government. The pending reauthorization of the IHCA would help clarify the role of the Federal Government as it pertains to Indian health care issues. The RIW members believe that the IHCA should be permanent.

Recent studies have validated the significant health disparities that American Indians and Alaska Natives experience compared with U.S. All Races. The Federal Employees Health Plan (FEHP) Disparity Index Study shows that many Tribes are funded below the 50 percent level of need funding. Given the magnitude of the health disparities and the limited funding, the RIW members believe that this is an excellent opportunity for the IHS to clarify its Patient's Bill of Rights by better defining the quality and level of services that patients can expect.

## **A Separate Appropriation for a Special Mission**

The Congress has set Indian health appropriations and oversight apart from the HHS. Unlike sister agencies within the HHS, the IHS budget is not appropriated as part of the HHS budget. Rather, appropriations for the IHS and several other federal programs for Indian people are connected with Interior and Related Agencies appropriations. Moreover, Congressional direction and oversight of the HHS and the IHS is exercised through separate oversight committees.

The IHS appropriations are specifically for the provision of health care services to American Indian and Alaska Native people. But Federal health care services to Indian people are not funded as an entitlement. Increasing costs from rising inflation and an expanding beneficiary population are not covered automatically. Because the IHS budget competes for limited discretionary appropriations with other federal programs, IHS appropriations have never been sufficient for health care needs in Indian Country. There has been little progress in closing the gap because IHS buying power has not kept pace with the growing beneficiary population of Indian Country. Consequently, this under funded health care system has been unable to eliminate the health disparities experienced by Indian people.

## **Recommendations to Address the Core Principles**

The RIW proposes the following recommendations to help meet the needs for American Indian and Alaska Native health.

- 2.1 The Administration, Congress, and Federal agencies must recognize the sovereign status of Indian Tribes.
- 2.2 The HHS must expand its services into American Indian and Alaska Native communities as a part of carrying out the Federal trust responsibility for health care services to Indian people.
- 2.3 The position of IHS Director must be elevated to the Assistant Secretary level within HHS to strengthen the government-to-government relationship between the United States and Tribes.

- 2.4 The President must appoint a liaison in the White House for Tribal Leaders and Indian organizations to 1) inform the Administration on the status of Tribes, 2) assist the Administration in addressing the consultation directives and policies related to American Indian and Alaska Native people and their communities, and 3) explore ways to address Indian issues.
- 2.5 The HHS Secretary must provide to Tribal Governments direct eligibility for HHS grants and access to funds from other HHS agencies that are normally reserved only for states.
- 2.6 The HHS Secretary must issue a directive that all savings derived from IHS restructuring be exclusively reinvested in IHS mission-related activities.
- 2.7 The HHS Secretary must issue a letter about the One-HHS initiative to Tribal Leaders to initiate Tribal consultation.
- 2.8 The HHS Secretary must activate the Intradepartmental Council on Native American Affairs.
- 2.9 The HHS Secretary must regularly meet with Tribal Leaders to address how HHS can better address Indian health issues.
- 2.10 The HHS Secretary must exempt the IHS from full-time equivalent (FTE) and budget reductions since the Agency is under funded and had recently restructured in order to shift administrative resources to direct services in communities where Indian people are served.
- 2.11 Tribes must be consulted about the IHS/HHS/OMB budget early in the formulation process.
- 2.12 The IHS and HHS must consider the recommendations of the IHS/Tribal Public Health Support Workgroup and the Strategic Plan Workgroup.
- 2.13 The IHS and HHS must advocate for the Indian Health Care Improvement Act to become permanent legislation.
- 2.14 The IHS must clarify its Patient Bill of Rights to ensure both a high quality and level of services for American Indian and Alaska Native patients.